

Attachment 5

Letter from Governor



GOVERNOR GREG ABBOTT

July 24, 2023

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear President Biden:

In a late-night letter sent to me last Thursday, your lawyers at the Department of Justice threatened to sue the State of Texas over the floating marine barriers we have deployed in the Rio Grande River in Eagle Pass. Texas will see you in court, Mr. President.

In accordance with Article I, § 10, Clause 3 of the U.S. Constitution, I have asserted Texas's "sovereign interest in protecting [her] borders." *Arizona v. United States*, 567 U.S. 387, 419 (2012) (Scalia, J., dissenting). I have done so in my role as the commander-in-chief of our State's militia under Article IV, § 7 of the Texas Constitution. *See Abbott v. Biden*, 70 F.4th 817, 845 (5th Cir. 2023) (Oldham, J.) (holding that "the *Constitution* forbids President Biden from bypassing the States[and] stepping into Governor Abbott's shoes"). Your ongoing violation of Article IV, § 4 of the U.S. Constitution has left me no other choice.

All of these facts should be familiar, as they were laid out clearly in the three-page letter I sent to you on November 16, 2022. Then on January 8, 2023, I reiterated my point when I hand-delivered another letter to you on the El Paso tarmac during a tour of the border disaster you created: "All of this is happening because you have violated your constitutional obligation to defend the States against invasion through faithful execution of federal laws." Instead of belaboring our respective constitutional roles a third time, I am enclosing copies of my prior letters.

With all that in mind, your lawyers' claim that Texas's floating marine barriers violate Section 10 of the Rivers and Harbors Act misses the mark. In that statute, Congress decreed that "it shall not be lawful to build . . . any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any . . . water of the United States." 33 U.S.C. § 403. To state the obvious, that statute does not describe any action by the State of Texas.

But Texas's action is a side issue. The fact is, if you would just enforce the immigration laws Congress already has on the books, America would not be suffering from your record-breaking level of illegal immigration.

The Honorable Joseph R. Biden, Jr.

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While I share the humanitarian concerns noted in your lawyers' letter, Mr. President, your finger points in the wrong direction. Neither of us wants to see another death in the Rio Grande River. Yet your open-border policies encourage migrants to risk their lives by crossing illegally through the water, instead of safely and legally at a port of entry. Nobody drowns on a bridge.

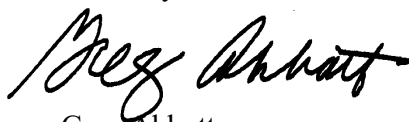
It has been under your watch that migrants have suffered an unprecedented crisis of inhumanity:

- Two years before Texas deployed the floating marine barriers, and a year before it deployed concertina wire, a United Nations agency declared that the border between the United States and Mexico is the deadliest land crossing in the world, with 728 migrant deaths recorded in 2021.
- Before Texas took the action about which you now complain, hundreds of migrants drowned in the Rio Grande River trying to cross the border illegally.
- Before Texas took the action about which you now complain, 53 migrants who illegally crossed the border died in the back of an 18-wheel tractor trailer near San Antonio.
- Before Texas took the action about which you now complain, thousands of Americans lost their lives to the fentanyl that pours across our border daily.

If you truly care about human life, you must begin enforcing federal immigration laws. By doing so, you can help me stop migrants from wagering their lives in the waters of the Rio Grande River. You can also help me save Texans, and indeed all Americans, from deadly drugs like fentanyl, cartel violence, and the horrors of human trafficking.

To end the risk that migrants will be harmed crossing the border illegally, you must fully enforce the laws of the United States that prohibit illegal immigration between ports of entry. In the meantime, Texas will fully utilize its constitutional authority to deal with the crisis you have caused.

Sincerely,



Greg Abbott
Governor

GA:jsd

cc: The Honorable Merrick B. Garland, U.S. Attorney General
The Honorable Angela Colmenero, Provisional Attorney General of Texas
The Honorable Jane Nelson, Secretary of State of Texas
Colonel Steven C. McCraw, Director, Department of Public Safety
Major General Thomas M. Suelzer, Adjutant General, Texas Military Department



GOVERNOR GREG ABBOTT

November 16, 2022

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear President Biden:

The U.S. Constitution won ratification by promising the States, in Article IV, § 4, that the federal government “shall protect each of them against Invasion.” By refusing to enforce the immigration laws enacted by Congress, including 8 U.S.C. § 1325(a)(1)’s criminal prohibition against aliens entering the United States between authorized ports of entry, your Administration has made clear that it will not honor that guarantee. The federal government’s failure has forced me to invoke Article I, § 10, Clause 3 of the U.S. Constitution, thereby enabling the State of Texas to protect its own territory against invasion by the Mexican drug cartels.

Your inaction has led to catastrophic consequences. Under your watch, America is suffering the highest volume of illegal immigration in the history of our country. This past year, more than 2 million immigrants tried to enter the country illegally, coming from more than 100 countries across the globe. Worse yet, your failed border policies recently prompted a United Nations agency to declare that the border between the United States and Mexico is the deadliest land crossing in the world.

Texans are paying the price for your failure. Ranches are being ripped apart, and homes are vulnerable to intrusion. Our border communities are regularly disrupted by human traffickers and bailouts. Deadly fentanyl is crossing the porous border to such a degree that it is now the leading cause of death for citizens between the ages of 18 and 45.

By opening our border to this record-breaking level of illegal immigration, you and your Administration are in violation of Article IV, § 4 of the U.S. Constitution. Your sustained dereliction of duty compels Texas to invoke the powers reserved in Article I, § 10, Clause 3, which represents “an acknowledgement of the States’ sovereign interest in protecting their borders.” *Arizona v. United States*, 567 U.S. 387, 419 (2012) (Scalia, J., dissenting). Using that authority, Texas will escalate our efforts to repel and turn back any immigrant who seeks to enter our State at a border crossing that Congress has designated as illegal; to return to the border those who do cross illegally; and to arrest criminals who violate Texas law.

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Know this: Article I, § 10, Clause 3 is not just excess verbiage. It reflects an understanding by our Founders, the authors of the Constitution, that some future President might abandon his obligation to safeguard the States from an extraordinary inflow of people who have no legal right of entry. They foresaw your failures. In the more than 240 years of our great nation, no Administration has done more than yours to place the States in “imminent Danger”—a direct result of your policy decisions and refusal to deliver on the Article IV, § 4 guarantee. In the absence of action by your Administration to secure the border, every act by Texas officials is taken pursuant to the authority that the Founders recognized in Article I, § 10, Clause 3.

All of this can be avoided, of course, if you will simply enforce the laws that are already on the books. Your Administration must end its catch-and-release policies, repel this unprecedented mass migration, and satisfy its constitutional obligation through faithful execution of the immigration laws enacted by Congress:

- You should aggressively prosecute the federal crimes of illegal entry and illegal reentry. *See* 8 U.S.C. § 1325, § 1326.
- You should comply with statutes mandating that various categories of aliens “shall” be detained. *See, e.g.,* 8 U.S.C. § 1225(b)(1)(B)(ii) & (iii)(IV) (aliens claiming asylum); *id.* § 1225(b)(2)(A) (aliens applying for admission); *id.* § 1226(c)(1) (criminal aliens); *id.* § 1231(a)(2) (aliens ordered removed); *id.* § 1222(a) (aliens who may carry disease).
- You should stop paroling aliens *en masse* in violation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which decrees that aliens applying for admission can be paroled into the United States “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A).
- You should fully reinstate the Migrant Protection Protocols, such that aliens seeking admission remain in Mexico while proceedings unfold in the United States. *See* 8 U.S.C. § 1225(b)(2)(C).
- You should immediately resume construction of the border wall in Texas, using the billions of dollars Congress has appropriated for that purpose. *See* FY2021 DHS Appropriations Act § 210, Pub. L. 116-260, 134 Stat. 1182, 1456–57 (Dec. 27, 2020); FY2020 DHS Appropriations Act § 209, Pub. L. 116-93, 133 Stat. 2317, 2511–12 (Dec. 20, 2019).

Americans want an orderly immigration process that adheres to the laws enacted by the legislators they sent to Washington. In the words of Judge Oldham, however, you have “supplant[ed] the rule of law with the rule of say-so” while “tell[ing] Congress to pound sand.” *Texas v. Biden*, 20 F.4th 928, 982, 1004 (5th Cir. 2021); *cf.* U.S. CONST. art. I, § 8, cl. 4 (empowering Congress “[t]o establish an uniform Rule of Naturalization”).

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Before you took office, the United States enjoyed some of the lowest illegal-immigration figures it had seen in decades. Your Administration gutted the policies that yielded those low numbers. You must reinstate the policies that you eliminated, or craft and implement new policies, in order to fulfill your constitutional duty to enforce federal immigration laws and protect the States against invasion.

Your silence in the face of our repeated pleas is deafening. Your refusal to even visit the border for a firsthand look at the chaos you have caused is damning. Two years of inaction on your part now leave Texas with no choice but to escalate our efforts to secure our State. Your open-border policies, which have catalyzed an unprecedented crisis of illegal immigration, are the sole cause of Texas having to invoke our constitutional authority to defend ourselves.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Abbott", with a stylized, cursive script.

Greg Abbott
Governor of Texas

GA:jsd

cc: The Honorable Merrick B. Garland, U.S. Attorney General
The Honorable Alejandro Mayorkas, U.S. Secretary of Homeland Security



GOVERNOR GREG ABBOTT

Via Hand-Delivery

January 8, 2023

The Honorable Joseph R. Biden, Jr.
President of the United States

Dear President Biden:

Your visit to our southern border with Mexico today is \$20 billion too little and two years too late. Moreover, your visit avoids the sites where mass illegal immigration occurs and sidesteps the thousands of angry Texas property owners whose lives have been destroyed by your border policies. Even the city you visit has been sanitized of the migrant camps which had overrun downtown El Paso because your Administration wants to shield you from the chaos that Texans experience on a daily basis. This chaos is the direct result of your failure to enforce the immigration laws that Congress enacted.

Under President Trump, the federal government achieved historically low levels of illegal immigration. Under your watch, by contrast, America is suffering the worst illegal immigration in the history of our country. Your open-border policies have emboldened the cartels, who grow wealthy by trafficking deadly fentanyl and even human beings. Texans are paying an especially high price for your failure, sometimes with their very lives, as local leaders from your own party will tell you if given the chance.

All of this is happening because you have violated your constitutional obligation to defend the States against invasion through faithful execution of federal laws. Halfway through your presidency, though, I can finally welcome you to the border. When you finish the photo-ops in a carefully stage-managed version of El Paso, you have a job to do:

- You must comply with the many statutes mandating that various categories of aliens “shall” be detained, and end the practice of unlawfully paroling aliens *en masse*.
- You must stop sandbagging the implementation of the Remain-in-Mexico policy and Title 42 expulsions, and fully enforce those measures as the federal courts have ordered you to do.
- You must aggressively prosecute illegal entry between ports of entry, and allow ICE to remove illegal immigrants in accordance with existing federal laws.
- You must immediately resume construction of the border wall in the State of Texas, using the billions of dollars Congress has appropriated for that purpose.
- You must designate the Mexican drug cartels as foreign terrorist organizations.

On behalf of all Americans, I implore you: Secure our border by enforcing Congress’s immigration laws.

Sincerely,

Greg Abbott
Governor